



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 5, 1996

Honorable Al Schorre
Midland County District Attorney
Midland County Courthouse
Midland, Texas 79701

OR96-0892

Dear Mr. Schorre:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34365.

The Midland County District Attorney (the "district attorney") received an open records request for records relating to a specified criminal prosecution. You have submitted the requested records for our review and contend that sections 552.103 and 552.108 of the Government Code except them from required public disclosure. You also explain that some of the requested records were obtained pursuant to a grand jury subpoena.

Although you do not raise section 552.101 of the Government Code, which prohibits disclosure of records that are confidential by statutory law, we address that section because release of confidential records is a misdemeanor. *See* Gov't Code § 552.352. Section 261.201 of the Family Code reads in pertinent part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

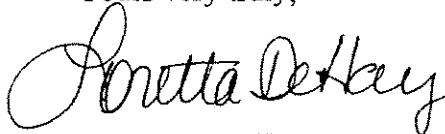
(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information consists of "reports, records, communications, and working papers" used or developed in investigations made under chapter 261 of the Family Code. The records may therefore only be disclosed under this section if the district attorney determines that release is consistent with the Family Code or under rules adopted by the investigating agency.¹

With respect to the grand jury records, this office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part, from the provisions of the Open Records Act, we conclude that the subpoenaed materials are not subject to the Open Records Act and therefore need not be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

¹Because we conclude that you must withhold the requested records under the Family Code, we do not address your claims under sections 552.103 and 552.108 of the Government Code.

Ref.: ID# 34365

Enclosures: Submitted documents

cc: Mr. Thomas J. Frederick
2613 North Midland Drive #506
Midland, Texas 79707
(w/o enclosures)